

DETAILED ACTION

1. The following is a non-final, first office action on the merits. Claims 1-21 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 6, 8-12, 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuan (2002/0038277).**

As per claim 1, Yuan discloses a method for providing financial protection to providers of seller financing for buying and selling businesses (via the financial method whereby the buyer's payment obligation is guaranteed by the factor; see abstract), comprising the steps of:

utilizing existing credit scoring methodologies to evaluate risk in seller financing (paragraph [0028] discloses the factor is known as financial institutions and provide payment guarantee to the seller. Paragraph [0054] discloses financial institution is known as credit assurance companies. Therefore, factor is known as an insurance company. Paragraphs [0028] & [0138] also disclose factor may perform necessary credit check on buyer's credit and assume the risk. Therefore, factor utilizing credit check to assume the risk on buyer's credit);

charging a fee for providing the seller financing protection coverage (charging a free or commision to the seller for providing the seller the guarantee on buyer's payment; paragraph [0027]);

executing legal and financial transactions pertaining to providing the seller financing (a factoring agreement; paragraph [0028]); and

managing risk of the seller financing (providing the seller the guarantees payment on buyer's payment to avoid the risk of fraud; paragraph [0004]).

As per claim 6, Yuan discloses a method wherein the fee for seller financing is based on the existing credit scoring methodologies (Examiner notes that the fee paid for the insurance is inherently based upon the buyers and sellers credit check, discloses in [0203]. For example, if the buyer has poor credit the insurance will cost more to make up for the risk. Likewise, if the seller credit is poor the insurance fee would be higher as the seller is a high risk).

As per claim 8, Yuan discloses a method legal and financial transactions involve a UCC-1 financing statement and a promissory note (paragraph [0017] discloses a factor offer the seller a legal sale transaction through a UCC filing which is interpreted to include a UCC-1 financing statement. Paragraph [0089] discloses a factoring agreement which is interpreted to include a promissory note).

As per claim 9, Yuan discloses a method wherein UCC-1 financing statement and promissory note are assigned from a business seller in a seller financing transaction to an entity providing financial protection of seller financing (paragraph [0003] discloses the entities that participating in financial method are a bank, factor, seller and buyer, as well as an entity. Paragraph [0197] discloses the tri-party assignment agreement involving a first entity assigns its accounts receivable to a second which is interpreted to include UCC-1 financing statement and promissory note are assigned from a business seller to an entity).

As per claim 10, Yuan discloses a method wherein additional steps include monitoring, modifying and diversifying a cumulative portfolio of the seller financing transactions (managing risk of the seller financing which is interpreted to include monitoring, modifying and diversifying a cumulative portfolio of the seller financing transactions. As discussed in claim 1 above, managing risk of the seller financing is providing the seller the guarantees payment on buyer's

payment is to manage the risk of fraud; paragraph [0004]. Paragraphs [0068] & [0069] also disclose various types of payment guarantee to the sellers at steps 305 and 306 in FIG. 2).

As per claim 11, Yuan discloses a method wherein risk sharing entities such as insurance companies, reinsurance companies and finance companies are used to manage the risk of the seller financing portfolio notes (paragraphs [0059] & [0153] disclose risk sharing entities such as financial institution, factoring entity, banks and credit assurance companies involved with a sales marketplace in FIG.5).

As per claim 12, Yuan discloses a method wherein managing the risk of the seller financing includes recovering defaulted seller financing notes (paragraph [0148] discloses seller defaulted by not providing the advertised goods so the buyer is not required to pay which is effectively construed to be recovering the defaulted seller financing notes as the agreement is no longer binding).

As per claim 14, Yuan discloses a method wherein default options include straight liquidation or sale of a business (paragraphs [0020] & [0022] disclose the business has been purchased by highest bidder and second-place bidder wherein the buyer fails to pay), pursuing secondary buyer guarantees (paragraph [0022] discloses the second-place bidder as an alternate buyer which is interpreted to include secondary buyer guarantees), operating and turning around a business with new management and executing a work-out agreement with the existing management (paragraph [0072] through [0074] disclose wherein the seller successful in collecting payment may turning around in develop a good track record and result in an increase in payment guarantee with the new future transaction. In the situation wherein the seller unsuccessful in collecting payment, factor 30 executing a work-out agreement by suspend buyer's credit line in step 324 until payment is made and credit is re-established).

As per claim 15, Yuan discloses a method for reducing risk to a seller when financing a sale to a buyer (providing the seller the guarantees payment on buyer's payment to reduce the risk of fraud; paragraph [0004]), the method comprising steps of:

determining factors relating to a risk of default by the buyer (paragraph [0022] discloses factors relating to a risk of default by the buyer including the auction does not involve the immediate payment by the buyer, the seller receives no payment from the buyer, and the seller loses out on a proper sale); and

insuring the risk of default (paragraph [0107] discloses factor pays the seller in step 379 to insure the risk of default).

As per claim 16, Yuan discloses a method for reducing risk to the seller when financing the sale to the buyer wherein an insurer pays the seller when the buyer defaults (paragraph [0107] discloses factor 30 which is interpreted to be an insurer pays the seller in step 379 when the buyer defaults).

As per claim 17, Yuan discloses a method for reducing risk to the seller when financing the sale to the buyer comprising a step of determining if the buyer has defaulted on payments for the sale (paragraph [0132] discloses the buyer has defaulted on payments by steps 376a-380 or 376a-384).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan (2002/0038277) in view of Prokoski (6,393,406).

As per claim 2, Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method wherein intangible assets comprise 100% of a seller-financed loan.

Prokoski teaches that it is old and well known in the art of sale, to sell, value and finance intellectual properties to allow for the transfer of title to intellectual properties, such as intangible asset (see paragraph [0003]).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the good or service sold in Yuan to be an intangible asset, such as an intellectual property as taught by Prokoski in order to allow the transfer of title of intangible assets.

Note: Examiner construes that in this scenario the seller is now selling an intangible asset and it is being financed by that seller and 100% of the financing is for the intangible asset.

6. Claims 3, 4, 18 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan (2002/0038277) and Prokoski (6,393,406) in view of Risen, Jr. et al. (2003/0061133).

As per claim 3 and 4, Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method of determining the portion of a seller-financed loan that corresponds to intangible assets and insuring that portion.

Risen, Jr. et al. teaches that a seller may sell an asset, such as a business, for which a portion of the value is an intangible asset, such as intellectual property, and to determine the portion of the total cost that applies to the intangible asset (see column 1, lines 16-20).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the good or service sold in Yuan and Prokoski to be an asset, such as a business, which a portion

of the value is an intangible asset and to determine the portion of the total value that applies to the intangible asset in order to allow for the sale of business assets that have intellectual property associated with them. For example, a seller would now sell a business that has intellectual property and would be provided the insured seller financing of Yuan.

As per claim 18, Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method for reducing risk to the seller when financing the sale to the buyer wherein comprises a step of determining how much of the sale corresponds to intangible assets.

Risen, Jr. et al. teaches that a seller may sell an asset, such as a business, for which a portion of the value is an intangible asset, such as intellectual property, and to determine how much of the total cost that applies to the intangible asset (see column 1, lines 16-20).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the good or service sold in Yuan and Prokoski to be an asset which a sale of the value is an intangible asset and to determine how much of the total cost that applies to the intangible asset in order to allow for the sale of business of assets that have intellectual property associated with it. A seller would now sell a business that has intellectual property and would be determined the cost of sale in seller financing of Yuan.

As per claim 19, Yuan discloses a method for reducing risk to a seller when financing a sale to a buyer (providing the seller the guarantees payment on buyer's payment to reduce the risk of fraud; paragraph [0004]), comprising steps of:

obtaining insurance from an entity, other than the buyer or seller, that payments made from the buyer to the seller for the portion are made (paragraphs [0003] & [0059] disclose entities participating such as bank, factor, seller and buyer financial institution and factoring

entity (paragraph [0072] discloses the seller obtaining a payment guarantee from factor 30 which is interpreted to be obtaining insurance from entity).

Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method for reducing risk to the seller when financing the sale to the buyer wherein comprises the steps of transferring a business to a buyer and financing at least a portion of the transfer by the seller.

Risen, Jr. et al. teaches that it is old and well known in the art of sales, to sell a business to the buyer, a seller may financing an asset, such as a business, for which a portion of the value is an intangible asset, such as intellectual property (see column 1, lines 16-20).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the good or service sold in Yuan and Prokoski to be an asset which a portion of the value is an intangible asset and to transfer this value to the buyer in order to manage the risk of the seller financing portfolios. A seller would now transfer a business that has intellectual property and would be managed the cost of sale in seller financing of Yuan.

As per claim 20, Yuan discloses a method for reducing risk to the seller when financing the sale to the buyer wherein the entity determines the risk of default by the buyer (paragraph [0205] discloses factor 1004 determines the risk).

As per claim 21, Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method for reducing risk to the seller when financing the sale to the buyer wherein the entity determines which portion of the business corresponds to tangible assets.

Risen, Jr. et al. teaches that a seller may sell an asset, such as a business, for which a portion of the value is an intangible asset, such as intellectual property, and to determine the portion of the total cost that applies to the intangible asset (see column 1, lines 16-20).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the good or service sold in Yuan and Prokoski to be an asset which a portion of the value is an intangible asset and to determine the portion of the total cost that applies to the intangible asset in order to allow for the sale of business of assets that have intellectual property associated with it. For example, a seller would now sell a business that has intellectual property and would be provided the insured seller financing of Yuan.

7. Claims 5, 7, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan(2002/0038277), Prokoski (6,393,406), and Risen, Jr. et al. (2003/0061133) in view of Heffner et al. (2003/0018558).

As per claim 5, Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method wherein existing credit scoring methodologies used by the small business administration (SBA), commercial lenders and discounted note brokers are utilized to evaluate the seller.

Heffner et al. teaches a method wherein existing credit scoring methodologies used by the small business administration (SBA) (paragraphs [0005] & [0073] disclose small business which is interpreted to include the small business administration), commercial lenders (see [0127]) and discounted note brokers (paragraph [0075] discloses brokers which is interpreted to include discounted note brokers) are utilized to evaluate the seller.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify a method of Yuan, Prokoski and Nutter to include the small business administration (SBA), commercial lenders and discounted note brokers are utilized to evaluate the seller as taught by Heffner et al. in order to provide experience and knowledgeable participants in market.

As per claim 7, Yuan teaches a method where existing credit scoring methodologies utilize proof of profitability (paragraph [0213] discloses the percentage of mark-up based on factor's collection on an account receivable represents a profit), buyer experience (paragraphs [0006] & [0012] disclose buyer experience of using Letters of credit to receive goods or services from seller), profit and loss statement (paragraph [0090] discloses a financial statement may be used in the application process which is interpreted to include financial profit and loss statement), loan position (paragraph [0184] discloses bank 1003 is in a position to provide loans to supplier 1005), personal buyer guarantee and turnaround potential (paragraph [0072] discloses factor provides the buyer's payment guarantee to seller and increase the credit limit of buyer based on their guarantee payment which is interpreted to include the turnaround potential).

Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method wherein existing credit scoring utilize loan to value ratio analysis, financial analysis of tax returns, and evaluation of credit rating (FICA score of 625+).

Heffner et al. teaches a method wherein existing credit scoring utilize loan to value ratio analysis (see [0266]), tax returns (see [0226]), and evaluation of credit rating (FICA score of 625+) (see [0369]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify a method of Yuan, Prokoski and Nutter include credit scoring utilize loan to value ratio analysis, tax returns, and evaluation of credit rating (FICA score of 625+) as taught by Heffner et al. in order to provide the benefits of credit rating.

As per claim 13, Yuan teaches all the elements of the claim invention, but fails to explicitly teach a method wherein demand for seller financing for buying and selling businesses comes from business brokerages, closing agents and small business attorneys.

Heffner et al. teaches a method wherein demand for seller financing for buying and selling businesses comes from business brokerages (paragraph [0081] discloses Brokerage Company in TABLE 1 bring together buyer and investor at phase 116 which is interpreted to be business brokerages, closing agents (paragraph [102] & [209] disclose loan agent and customer service agent which is interpreted to include closing agents) and small business attorney (paragraphs [0005] & [0073] disclose small business which is interpreted to include the small business attorney).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify a method of Yuan, Prokoski and Nutter include businesses comes from business brokerages, closing agents and small business attorneys as taught by Heffner et al. in order to identify the relationship of all participants in market.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosures.

Kawakami et al. (2002/00461164) discloses a method and system for financially intermediating transaction of products.

Harrison, JR. et al. (2001/0039524) discloses electronic bond & Guaranty process and business method.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tien C. Nguyen whose telephone number is 571-270-5108. The examiner can normally be reached on Monday-Thursday (8:00am-4:00pm EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571-270-3033. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/

Primary Examiner, Art Unit 3627

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